

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STRUCTURE PROBE INC.,

Plaintiff,

v.

**EMS ACQUISITION CORP. (D/B/A,
ELECTRON MICROSCOPY SCIENCES).**

Defendant.

Civil Action No. 07-CV-3893 (LBS)

DECLARATION OF STACIE G. KIRSCH

I, Stacie G. Kirsch, based on personal knowledge hereby declare:

1. I have been employed by EMS Acquisition Corp, d/b/a, Electron Microscopy Sciences ("EMS") since October 1988. Since October 1988, I have been President of EMS. I am authorized to make this statement on its behalf.

2. EMS is a corporation organized under the laws of the Commonwealth of Pennsylvania with its principal place of business and only place of business located at 1560 Industry Road, Hatfield, Pennsylvania.

3. EMS is a privately-held business with approximately forty employees in Pennsylvania and no employees located outside of Pennsylvania.

4. The sources of proof that EMS will need to rely on to defend against this action by Structure Probe, Inc. ("SPI") are located principally in Pennsylvania.

5. EMS's documents relating to the website accused in SPI's Complaint are located at EMS's facility in Pennsylvania.

6. Based on my current understanding of the issues raised in the complaint, I believe that all the witnesses that EMS will need to testify in this action reside and work in Pennsylvania. I am not aware of any possible witnesses who reside or work in New York State.

7. If trial is necessary, I presently anticipate that witnesses for EMS would testify about the following:

- a. EMS's website, the sources of the material addressed in the complaint that was on EMS's website;
- b. SPI's website, the material it copied from third parties to put on its website, and SPI's phony claim of copyright in the work of others;
- c. the business of EMS and SPI generally;
- d. EMS's sales, and, more specifically, how none of the materials addressed in plaintiff's complaint have had any effect on EMS's sales.

The potential witnesses who I anticipate would testify about the topics above are all located in Pennsylvania. These potential witnesses would be:

- (1) EMS employees, including myself, who are all located at EMS in Hatfield, Pennsylvania, and
- (2) a non-EMS-employee who did some work on the EMS website and is located in Montgomery County, Pennsylvania.

8. Both Hatfield, Pennsylvania and Montgomery County, Pennsylvania are in the Eastern District of Pennsylvania.

9. EMS has approximately 25,000 customers. Of those, only about 100-150 are from New York State. Approximately 5,000 are in Pennsylvania. EMS sells worldwide and in every state in the country. Only approximately 2% percent of EMS's sales are derived from customers in New York State, about half of that being in the counties comprising the Southern District of New York (New York, Putnam, Westchester, Orange, Dutchess, Bronx, Rockland, and Sullivan).

10. EMS does not engage in any direct marketing targeted at New York State.

11. EMS does not have any facilities, offices, employees, agents, bank accounts, telephone listings, or any property of any kind in New York State.

12. EMS does not own, lease, or use any real or personal property in New York State.

13. EMS is not licensed to do business in New York and pays no taxes to New York.

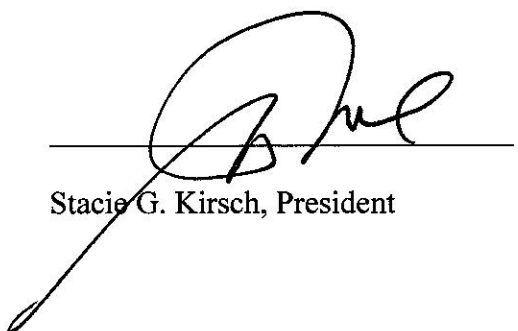
14. EMS employees do not make sales calls to New York.

15. EMS has not participated in any trade shows located in New York for about 15 years.

16. EMS knows of no sources of proof that EMS will need to rely upon in defending this action that are located in New York.

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: 9.19.07



Stacie G. Kirsch, President